

the “six inches to twenty four inches” feature set forth in claim one. We have proposed amending the specification to include this language. The inclusion of this language does not constitute new matter, because elsewhere in the specification, it states that the height of the invention is “approximately 10" to 12" *or more*, in the case of use for handicapped adults.” (*Emphasis added*, p. 6, Ins. 4 to 5).

Additionally, the specification was objected to for not including the phrase “perpendicular” to describe the flange. Although the flange is described as horizontal, and the wall of the spray shield is vertical, which, by operation of basic geometry describes a perpendicular relationship, the specification has been amended to explicitly state this. Again, inclusion of this language should not constitute new matter since the feature of being “ \perp ” is obvious to one skilled in the art when reading the specification and in view of the accompanying drawings.

Finally, the specification is objected to for not containing the subject matter of claim 9. Claim 9 currently reads as follows: “The toilet over spray shield of Claim 8 wherein the amusing image is imprinted on at least one sticker with an adhesive backing which has been secured to the upstanding wall.” This is perplexing, because the subject matter of claim 9 occurs in several places in the specification. For example, page 7, starting at line 9 of the specification states;

[t]o ensure the channeling, the back or rear interior portion of the toilet shield is to be provided with an area to place targeting stickers of different varieties thereupon. The stickers may be of cartoon or other licensed characters. Even a bullseye sticker may be used to make an amusing game out of proper toilet use for both male children and adults. The user or user’s parent may thus purchase different stickers to fit the game of their choice.

Additionally, on page 10, line 14 of the specification states “[a]nd, it is still an additional object of the present invention to provide an interior back or rear wall with an area for

amusing images, such as cartoon or licensed character or even bulls eye stickers”

Furthermore, on page 12, line 4, the specification states, “The amusing image may be a sticker of a cartoon figure as shown in the figure.”

It is possible the examiner objects to the claim because the adhesive background is not mentioned in the specification. Since an adhesive background is an integral part of a sticker, claim 9 is amended to remove any reference to such an adhesive.

Rejections under 35 U.S.C. § 112

The examiner rejected claim 2 because it recites a “substantially annular” flange. This language has been amended to “semi-elliptical.”

Rejection under 35 U.S.C. § 102

The examiner rejected claims 1, 2, 4, and 7 as being anticipated by Masters, et al., Pat. No. 5,077,840, under § 102(b). Each of these claims will be discussed individually below. To anticipate a claim, the reference must teach every element of a claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed.Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed.Cir. 1990). The knowledge that § 102(b) relies on a strict standard of identity is critical to understanding why

Masters, et al. does not anticipate these claims.

Claim 1 recites a male over spray shield having an upstanding wall which is adapted to removably sit *within* a conventional toilet bowl. (Emphasis added). The Masters reference discloses a device that is intended to be placed on top of the toilet rim. Although both devices have flanges, the flanges in Masters perform the structural task of holding the channeling apparatus onto the toilet bowl, whereas the flanges in the present application merely steady the spray shield; it is the structure of the shield itself which holds it in the toilet. Furthermore, Masters discloses a flange which has, in *cross-section*, the shape of a C, that extends downward to go around the edge of the toilet bowl, whereas the flange in the present application extends outward, and merely sits on the edge of the toilet bowl. Because the flange in Masters is structurally and functionally different from the flange in the present invention, the rejection based upon §102(b) respectfully should be withdrawn.

Just as claim 1 had a flange element, Claim 2 claims a flange attachment with a substantially semi-elliptical. This is different from what is disclosed in Masters because Masters discloses a ringlike flange with a cross section of a C that extends downward to surround the edge of the toilet bowl, which functions to hold the edge of the toilet seat, whereas the flange in the present application extends outward, and merely sits on the top edge of the toilet bowl where gravity holds it in place. Because this a different type of flange, both in structure and function, Masters et al. does not teach every element of claim 2.

Claim 4 was also rejected under § 102(b) as being anticipated by Masters et al. It has been amended to read “The toilet over spray shield of Claim 1 having an exterior

portion to the upstanding wall of the device and further the horizontal flange attachment means are integral thereto.” Since a rejection under 103 requires elements to be exactly the same, this claim should not be rejected, because of the horizontal flange attachment means in this invention. The examiner states that the flanges are “substantially identical,” which is not the same as identical. Since the flanges are different, claim 4 is not anticipated by Masters.

Claim 7 recites an interior wall which extends at least one inch below the flange attachment means. Masters discloses nothing that shows the interior wall extending beyond the flange attachment means. Even though the flange may extend below the attachment means, the interior wall is never shown to extend at all below the flange attachment means. This means there is an element present in our claim which is not present in Masters. Thus, the element of the inner wall extending more than one inch below the flange attachment means does not appear in Masters, et al., and therefore, the rejection of Claim 7 is improper and respectfully should be withdrawn.

Rejections under 35 U.S.C. § 103

The rejections under 35 U.S.C. § 103 should be withdrawn because not all elements of the claimed invention was present in the prior art that was cited against it.

According to MPEP 2141 (I) The USPTO uses:

Graham v. John Deere Co. in the consideration and determination of obviousness under 35 U.S.C. 103. As quoted above, the four factual inquiries enunciated therein as a background for determining obviousness are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

In the present invention, prior art was cited that did not contain all elements of the

present invention. As a consequence, the first two Graham factors dictate that they should not be considered. They state that for determination of obviousness, one should determine the scope and content of the prior art, and then ascertain the differences between the prior art. None of the prior art references cited contained a flange of the same structure as the one in the current invention. Since a flange like the one in the present invention was not found, the references should not be used to render the invention obvious.

In claims 1 and 7, the examiner states that the choices of proportions would be obvious to make, but submits no evidence to back up that assertion. Furthermore, in claim 7, the portion extending below the flange is entirely lacking in Masters, and claim 1 does not have the same flanges as in Masters, so, even when combined with Gambla, these two claims are not rendered obvious.

In regards to claim 5, although Gambla has a handle, the flange in the present invention differs sufficiently from the flange in Masters that not all elements of the invention are present, even if one were to combine the elements.

In regards to claim 8, even if the spray shield of Masters were combined with the Gambla to contain an amusing image, it would still not be the same invention as the current invention, since the flanges differ both in function and form.

Hence, Applicant submits that the claims of the instant application are now in condition for allowance and earnestly solicits an expedient Notice of Allowability.

Respectfully Submitted,

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I. LIST OF AMENDMENTS TO THE SPECIFICATIONS

On page 13, starting on line 10, please insert to the paragraph "It is anticipated that the exterior 18 and interior 12 walls of the toilet over spray shield are preferably at least 10" in height above toilet seat rim to ensure that all spray is channeled into the toilet bowl 22 and that nothing ends up on the floor or walls of the bathroom. It is anticipated that the shield 10 may be used with adult handicapped males, and in such an instance, the shield may be from 20 to ~~22~~" 24" in height. However, preferable dimensions for the walls may be from 6" to as much as 18" in height when used for children, depending upon the preferences of the user or designer of the particular embodiment of the device. Thus, the total range in height of the device is from 6" to 24" inches, depending on whether it is being used for children or handicapped adults."

On page 12, starting with line 18, insert the following into the paragraph: "Along exterior cylindrical wall 18, there exists a flat flange means 20 which is perpendicular to the wall 12, and encircles the wall 12 in a semi-elliptical fashion. This flange means 20 ~~that~~ sits upon toilet bowl rim 24 such that the toilet over spray shield 10 does not fall into toilet bowl 22."

II. LIST OF AMENDMENTS TO THE CLAIMS

Applicant would like to amend the claims as follows:

2. (Amended) The toilet over spray shield of Claim 1 wherein the flange attachment means are substantially ~~annular~~ semi-elliptical in configuration surrounding at least a portion of the upstanding wall of the device and further extending substantially outward and perpendicular to the upstanding wall of the device.
4. (Amended) The toilet over spray shield of Claim 1 having an exterior portion to the upstanding wall of the device and further the horizontal flange attachment means are integral thereto.
9. (Amended) The toilet over spray of claim 8 wherein the amusing image is imprinted on at least one sticker ~~with an adhesive backing~~ which has been secured to the upstanding wall.
10. (New) The toilet over spray shield of Claim 5 where the handle means is an integral recessed handle.

III. LIST OF CLAIMS

1. (Original) A male toilet over spray shield having an upstanding wall which is substantially semi-elliptical in configuration which is adapted to removable sit within a conventional toilet bowl, wherein the upstanding wall is substantially from six inches to twenty four inches in height, and the over-spray shield further having at least one protruding flange attachment means for attaching the shield to toilet seat rim after raising toilet seat and it further is provided with a domed top to prevent urine splash back out the top of the device.
2. (Amended) The toilet over spray shield of Claim 1 wherein the flange attachment means are substantially ~~annular~~ semi-elliptical in configuration surrounding at least a portion of the upstanding wall of the device and further extending substantially outward and perpendicular to the upstanding wall of the device.
3. (Withdrawn)
4. (Amended) The toilet over spray shield of Claim 1 having an exterior portion to the upstanding wall of the device and further the horizontal flange attachment means are integral thereto.
5. (Amended) The toilet over spray shield of Claim 1 having an exterior portion to the upstanding wall and the domed top wherein handle means is provided along the exterior portion of the semi-elliptical walls and the domed top for easy insertion and removal of the device.
6. (Original) The toilet over spray shield of Claim 4 wherein the handle means comprises at least two apertures in the upstanding wall which are adapted to fit human fingers therethrough.

7. (Original) The toilet over spray shield of Claim 1 wherein the upstanding wall extends at least one inch below the flange attachment means.
8. (Original) The toilet over spray shield of Claim 1 wherein the device further has an interior wall portion in the upstanding wall and the interior wall portion is further provided with an amusing image for urine channeling.
9. (Amended) The toilet over spray of claim 8 wherein the amusing image is imprinted on at least one sticker ~~with an adhesive backing~~ which has been secured to the upstanding wall.
10. (New) The toilet over spray shield of Claim 5 where the handle means is an integral recessed handle.